STATUTORY INSTRUMENTS

2004 No. xxx

EDUCATION, ENGLAND

The Education (Change of Category of Maintained Schools) (Amendment) (England) Regulations 2004

Made - - - -	*xxx*
Laid before Parliament	*xxx*
Coming into force - -	*xxx*

The Secretary of State, in exercise of the powers conferred upon him by sections 138(7), 144, paragraphs 2 and 5 of Schedule 8 of the School Standards and Framework Act 1998 **(a)** hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Education (Change of Category of Maintained Schools) (Amendment) (England) Regulations 2004 and shall come into force on xxx 2004.

(2) In these Regulations —

"the Principal Regulations" means the Education (Change of Category of Maintained Schools) (England) Regulations 2003 **(b)**; and

"the 1998 Act" means the School Standards and Framework Act 1998.

Amendment of the Principal Regulations

2. The Principal Regulations shall be amended as follows.

3. In regulation 2(1) —

(1) in the definition of "implementation date", after the words "modified Schedule 6 to the Act" in the second place it appears there shall be inserted "or determined by the governing body under the alternative modified Schedule 6 to the Act";

(2) after the definition "the Act" there shall be inserted the definition ""the alternative modified Schedule 6" means that Schedule as it has effect with modifications by virtue of Schedule 2A to these Regulations"; and

(3) at the end of the definition of "proposals" there shall be added "or by a governing body (as the case may be) under paragraph 5 of the alternative modified Schedule 6 to the Act."

4. In regulation 4(1), for "Where" there shall be substituted "Except where paragraph (3) applies, where - ".

5. After regulation 4(2) there shall be inserted—

(**a**) 1998 c.31
(**b**) S.I. 2000/2195 as amended by S.I. 2003/2136.

"(3) Subject to paragraph (5), where a governing body propose under paragraph 2 of Schedule 8 to the Act that either a community or a voluntary controlled school and in each case a secondary school should become a foundation school, sections 28(3) and (8) of and Part I of Schedule 6 to the Act shall apply to the proposals published under paragraph 2 of Schedule 8 of the Act and shall do so with the modifications set out in Schedule 2A.

(4) The provisions of section 28 of and Part I of Schedule 6 to the Act so applied are set out as modified in Schedule 2B.

(5) If at the time, sections 15, 17 or Schedule 15 of the Act apply to the school, paragraph (3) shall not apply and accordingly paragraph (1) shall apply."

6. In regulation 11(2) —

(1) at the end of sub-paragraph (b), for the full-stop there shall be substituted a comma and the word "or"; and

(2) after sub-paragraph (b) there shall be inserted "(c) on the date the governing body determine to implement a proposal under paragraph 4 of the alternative modified Schedule 6 to the Act.".

7. After Schedule 2, there shall be inserted—

"

SCHEDULE 2A

Regulation 4(3)

PROVISIONS OF SECTION 28 OF, AND SCHEDULE 6 TO THE ACT HAVING EFFECT IN RELATION TO PROPOSALS MENTIONED IN REGULATION 4(3)

The subsections of section 28 of, and the paragraphs in Part 1 of Schedule 6 to, the Act specified in the left hand column of the table below shall have effect in relation to proposals mentioned in regulation 4 with the modifications specified in the right hand column of the table.

Provision	***Modification***
Section 28(3)	That subsection shall have the effect as if – (a) for "under this section" there were substituted "under paragraph 2 of Schedule 8"; and (b) for paragraphs (a) and (b) and the words "as may be prescribed." there were substituted – "(a) contain the following information – (i) the name of the school for which the governing body are publishing the proposal; (ii) the proposed implementation date; (iii) the relevant contact name (if any) and address of the school's governing body to where any objections or comments may be sent and the date by which they should be sent; and (iv) a statement that it is proposed to change the category of the school (stating the current category of school) to a foundation school.

Provision	***Modification***

	(v) a statement that the school will – (aa) have or continue to have a foundation established otherwise than under this Act; or (bb) belong or continue to belong to a group of schools for which a foundation body acts; or (cc) be a foundation school not falling within either of sub-paragraphs (v)(aa) or (bb) above; (vi) details of any trusts on which the school premises are held or it is proposed will be held or any proposed trusts on which it is proposed the school premises will be held; (vii) details of the body or authority to whom, on the date on which it is proposed that the school change category, it is proposed that land should be transferred in accordance with Principal Regulations; (viii) (aa) the name of any person who is entitled to appoint the foundation governors and, if there is more than one such person, the basis upon which such appointments are made, (bb) details of any foundation governorship to be held ex offico by the holder of a named office, and (cc) the name of any person who is entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor; (ix) where the school is to be a foundation school which has a religious character, a description of the religious ethos of the school; (x) (*if it is proposed that the school will have or continue to have a foundation other than by belonging to a group of schools for which a foundation body acts)* the identity of that foundation; (xi) *(if it is proposed that the school will belong or continue to belong to a group of schools for which a foundation body acts)* the identity of that body and the identity of the other schools in the group for which the foundation body performs or will perform the functions set out in section 21(4); and (b) shall be published – (i) by being posted in a conspicuous place in the area served by the school; (ii) in at least one newspaper circulating in the area served by the school; and (iii) by being posted at or near the main entrance to the school or, if there is more than one main entrance, all of them.**”**

Section 28(8)	That subsection shall have effect as if it were omitted and the following substituted "Schedule 6 shall have effect in relation to the procedure for dealing with proposals under paragraph 2 of Schedule 8."
Provision	***Modification***
Schedule 6 Paragraph 1	That paragraph shall have effect as if – (a) in sub-paragraph (1) for "section 28, 29 or 31" there were substituted "paragraph 2 of Schedule 8" and the words "or proposed school" were omitted; and (b) sub-paragraph (2) were omitted.
Paragraph 2	That paragraph shall have effect as if – (a) in sub-paragraph (1) for "section 28, 29 or 31 there were substituted "paragraph 2 of Schedule 8"; (b) for sub-paragraph (2) there were substituted – **"**(2) any objections or comments made under this paragraph shall be sent to the [name and] address given in the notice published under paragraph 28(3) for the receipt of objections or comments in the proposals within 4 weeks from the date of the publication of the proposals.**"** (c) sub-paragraph (3) were omitted.
Paragraph 4	That paragraph shall have effect as if – (a) for sub-paragraph (1) there were substituted – **"**(1) Where any proposals have been published by a governing body under paragraph 2 of Schedule 8 then (subject to the following provisions of this paragraph) that governing body shall after considering all objections and comments which are received on or before the date referred to in paragraph 2(2), determine whether the proposals shall be implemented.**"** (b) in sub-paragraph (2): the words for "4 months" there were substituted "six months"; "(as determined in accordance with regulations)" were omitted; for the words "the authority" there were substituted "the governing body"; and for the words "relevant committee" the words "the Secretary of State" were substituted. (c) sub-paragraphs (3), (4), (4A) and (5) were omitted.

Paragraph 5	That paragraph shall have effect as if it were omitted and the following were substituted – "(1) Where the governing body have determined under paragraph 4 to implement any proposals published under paragraph 2 of Schedule 8, then (subject to the following provisions of this paragraph), the proposals shall be implemented, in the form in which they were so determined in accordance with regulations made under paragraph 5 of Schedule 8. (2) The governing body may modify the implementation date in respect of the proposals after consulting the relevant local education authority."

"

Transitional Provisions

8. These Regulations shall not have effect in relation to any proposals published under paragraph 2 of Schedule 8 to the 1998 Act before xxx 2004.

Revocation

9. Regulation 20(3) of the Principal Regulations is hereby revoked.

SCHEDULE 2B

Regulation 5

PROVISIONS OF SECTION 28 OF, AND PART 1 TO, SCHEDULE 6 TO THE ACT APPLIED BY SCHEDULE 2A, AS MODIFIED

Section 28

(3) Proposals under paragraph 2 of Schedule 8 shall—

(a) contain the following information—

(i) the name of the school for which the governing body are publishing the proposal;

(ii) the proposed implementation date;

(iii) the relevant contact name (if any) and address of the school's governing body to where any objections or comments may be sent and the date by which they should be sent;

(iv) a statement that it is proposed to change the category of the school (stating the current category of school) to a foundation school;

(v) a statement that the school will—

(aa) have or continue to have a foundation established otherwise than under this Act; or

(bb) belong or continue to belong to a group of schools for which a foundation body acts; or

(cc) be a foundation school not falling within either of sub-paragraphs (v)(aa) or (bb) above;

(vi) details of any trusts on which the school premises are held or it is proposed will be held or any proposed trusts on which it is proposed the school premises will be held;

(vii) details of the body or authority to whom, on the date on which it is proposed that the school change category, it is proposed that land should be transferred in accordance with Principal Regulations;

(viii)

(aa) the name of any person who is entitled to appoint the foundation governors and, if there is more than one such person, the basis upon which such appointments are made,

(bb) details of any foundation governorship to be held ex officio by the holder of a named office, and

(cc) the name of any person who is entitled to request the removal of any ex officio foundation governor and to appoint any substitute governor;

(ix) where the school is to be a foundation school which has a religious character, a description of the religious ethos of the school;

(x) (*if it is proposed that the school will have or continue to have a foundation other than by belonging to a group of schools for which a foundation body acts)* the identity of that foundation; or

(xi) (*if it is proposed that the school will belong or continue to belong to a group of schools for which a foundation body acts)* the identity of that body and the identity of the other schools in the group for which the foundation body performs or will perform the functions set out in section 21(4); and

(b) shall be published—

(i) by being posted in a conspicuous place in the area served by the school;

(ii) in at least one newspaper circulating in the area served by the school; and

(iii) by being posted at or near the main entrance to the school or, if there is more than one main entrance, all of them.

(8) Schedule 6 shall have effect in relation to the procedure for dealing with proposals under paragraph 2 of Schedule 8.

Schedule 6: Part 1

1.—(1) This Part of this Schedule applies to proposals published under paragraph 2 of Schedule 8 which relate to a school in England.

Objections

2.—(1) Any person may make objections to or comments on any proposals published under paragraph 2 of Schedule 8.

(2) Any objections or comments made under this paragraph shall be sent to the [name and] address given in the notice published under paragraph 28(3) for the receipt of objections or comments in the proposals within 4 weeks from the date of the publication of the proposals.

Determination by LEA whether to implement proposals

4.—(1) Where any proposals have been published by a governing body under paragraph 2 of Schedule 8 then (subject to the following provisions of this paragraph) that governing body shall after considering all objections and comments which are received on or before the date referred to in paragraph 2(2), determine whether the proposals shall be implemented.

(2) Any determination under sub-paragraph (1) must be made within the period of six months beginning with the date of publication of the proposals; and the governing body shall notify the Secretary of State of any determination made by them under sub-paragraph (1).

Requirement to implement proposals

5.—(1) Where the governing body have determined under paragraph 4 to implement any proposals published under paragraph 2 of Schedule 8, then (subjection to the following provisions of this paragraph), the proposals shall be implemented, in the form in which they were so determined in accordance with regulations made under paragraph 5 of Schedule 8.

(2) The governing body may modify the implementation date in respect of the proposals after consulting the relevant local education authority.

Name
Parliamentary Under Secretary of State
Date Department for Education and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Change of Category of Maintained) (England) Regulations 2000 (No 2195) ("the Principal Regulations").

These amendments are consequential on amendments made to the Principal Regulations by the Education (Change of Category of Maintained) (England) (Amendment) Regulations 2003 (S.I.2003/2136).

Regulations 3 and 4 and 6 make minor amendments to the Principal Regulations in accordance with the further amendments proposed.

Regulation 5 amends regulation 4 of the Principal Regulations so as to provide that where a governing body propose that either a community or a voluntary controlled school (and in each case a secondary school) should become a foundation school, sections 28(3) and (8) of and Part 1 of Schedule 6 to the School Standards and Framework Act 1998 (the "Act") as modified in the new Schedule 2A (see below) shall apply, provided that where sections 15, 17 and Schedule 15 (which deal primarily with failing schools) of the Act apply to a school, the modified Schedule will not be relevant.

Regulation 7 inserts a new Schedule 2A to the Principal Regulations which will apply in accordance with the changes made to regulation 4 of the Principal Regulations and makes modifications to sections 28(3) and (8) of and Part 1 to the Act.

Regulation 8 sets out the transitional provisions in relation to these Regulations.

Regulation 9 revokes regulation 20(3) of the Principal Regulations. This regulation should have been revoked by S.I. 2003/2136, on the basis that the regulation was reported in the Joint Committee's thirty first report for defective drafting (together with an acknowledgement by the Department that the regulation was in any case redundant) but this was omitted to have been done.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the cost of business.